In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-764

KENNETH LAFOUNTAIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner's sole contention is that the warrantless search of his automobile was conducted without probable cause.

Following a jury-waived trial in the United States District Court for the Southern District of Texas, petitioner was convicted of possession of a controlled substance (marihuana) with intent to distribute, in violation of 21 U.S.C. 841(a)(1). He was sentenced to four years' imprisonment, be be followed by two years' special parole. The court of appeals affirmed (Pet. App. 1a-3a).

The evidence showed that on September 27, 1974, Drug Enforcement Administration agent Charles Kiefer was contacted by an informant who had provided reliable information some twenty times in the past (Tr. 8). The informant stated that a middle-aged couple had registered at the Palm View Golf Motel in McAllen, Texas, and were

about to secure a purchase of drugs. He told Kiefer that the couple had also been in the area one month earlier, when they had obtained a quantity of marihuana (Tr. 7-8, 14). The informant also gave the agent a detailed description of the couple's automobiles, an Oldsmobile and a rented Chevrolet, including their license numbers (Tr. 9, 12-14, 39).

On September 29, 1974, at 7:30 a.m., the informant, having failed to contact Kiefer, called Vernon Rosser, a local detective, to alert him that the Chevrolet would be picked up that morning at the motel and loaded with drugs (Tr. 48, 55-56). Rosser immediately established surveillance outside the motel and observed the arrival of a black Riviera. Petitioner alighted from this car and departed in the Chevrolet, followed closely by the detective. As petitioner drove away, he made several U-turns, apparently in order to detect any possible surveillance (Tr. 57). Rosser's presence was evidently not detected, and petitioner drove to a residence approximately five miles from McAllen. There, Rosser observed the Chevrolet backed up between two buildings, with its trunk lid open (Tr. 51-52).

Meanwhile, the informant had contacted agent Kiefer and warned him of the upcoming drug transaction. Kiefer and D.E.A. agent Kenneth Moore then joined Rosser (Tr. 8-9, 17-19).[1] At approximately 9:45 a.m., petitioner was seen leaving the residence in an Oldsmobile station wagon. The officers attempted to follow him but lost contact and returned to surveillance of the residence (Tr. 9, 53). Petitioner returned with a female passenger at approximately 10:45 a.m. His companion started the Chevrolet, and both cars drove away. Petitioner soon realized that he was being followed and made a U-turn, after

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[1]The informant by then was also in the area, and agent Moore spoke to him shortly before joining Rosser (Tr. 62-63, 75).

which the police stopped both cars. The Chevrolet was searched immediately and yielded some 253 pounds of marihuana; the Oldsmobile was taken into custody and later searched at the D.E.A. office, where it was found to contain some 202 pounds of marihuana (Tr. 10-11, 53-54).

Petitioner's only argument is that the agents lacked probable cause for the warrantless search of the vehicles because there was an insufficient showing of the underlying circumstances from which the informant determined that an offense was to be committed.

While we believe that the specificity of the informant's report may well have been sufficient to establish probable cause, the stop of petitioner's vehicle was in fact not based on the tip alone, but also on the results of the ensuing surveillance of petitioner's highly suspicious activities, which amply corroborated the reliability of the tip and provided probable cause for the stop and search.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1976.

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